

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**ACZEL CARDENAS SOSA,**

**Petitioner,**

**v.**

**Civil action no. 3:05CV58  
Criminal action no. 3:03CR31  
(Judge Broadwater)**

**UNITED STATES OF AMERICA,**

**Respondent.**

**REPORT AND RECOMMENDATION**

On June 13, 2005, the *pro se* petitioner, at inmate at the Eastern Regional Jail, filed a Motion Under 28 U.S.C. §2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody. This matter is pending before me for initial review and report and recommendation pursuant to LR PL P 83.15.

The petitioner pled guilty to distribution of methamphetamine (Count 8) and illegal reentry into the United States after having been convicted of an aggravated felony and previously deported. (Count 17). The petitioner moved to withdraw his plea. However, by Order entered on April 11, 2005, the Court denied the petitioner's motion to withdraw his plea. On June 6, 2005, the Court sentenced the petitioner to 444 months on Count 8 and 240 months on Count 17 to run concurrently. Subsequently, on June 8, 2005, the petitioner filed a notice of appeal.

Notwithstanding that the petitioner filed a notice of appeal, on June 13, 2005, the petitioner filed a §2255 motion alleging that his guilty plea was involuntary and unknowing and that his lawyer was ineffective.

The petitioner's §2255 motion is premature because his appeal is pending before the Fourth Circuit Court of Appeals. See Walker v. Connor, 2003 WL 21660483 (4th Cir. 2003).<sup>1</sup> Thus, the undersigned recommends that the petitioner's 2255 motion be denied and dismissed without prejudice.

Any party may file within ten (10) days after the receipt of this Recommendation with the Clerk of the Court written objections identifying the portions of the Recommendation to which objections are made, and the basis for such objections. A copy of such objections should also be submitted to the Honorable W. Craig Broadwater, United States District Judge. Failure to timely file objections to the Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Recommendation.<sup>2</sup>

The Clerk of Court is directed to mail a copy of this Recommendation to the *pro se* petitioner.

Dated: September 26, 2005

/s/ James. E. Seibert  
JAMES E. SEIBERT  
UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup>Pursuant to Fourth Circuit Local Rule 36(c), which disfavors citation of unpublished opinions, a copy of this unpublished opinion is attached.

<sup>2</sup> 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. ), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).